

MEMO ENDORSED p.2

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ADMITTED IN N.Y. AND N.J.

May 8, 2017

VIA EMAIL: [RICHARD_BERMAN@NYSD.USCOURTS.GOV]

~~TO BE FILED UNDER SEAL~~

Honorable Richard M. Berman
United States District Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

RE: UNITED STATES V. REZA ZARRAB, ET AL.,
S3 15 Cr. 867 (RMB)

Dear Judge Berman:

Following our last court appearance on May 2, 2017, I reviewed my sealed letter to your Honor dated May 2, 2017. Then, after discussion with Mr. Zarab, his other lawyers, including independent counsel James DeVita, we all noted that in my sealed letter, I gave the following response to Question No. 6 of your Honor's May 1st order: I answered "yes", but refused to elaborate, citing Mr. Zarab's attorney-client privilege as well as his Fifth Amendment privilege against self-incrimination.

In addition, on May 2, 2017, in response to the same Question No. 6 of the Court's May 1st Order in open court, the following exchange between me, as counsel for Mr. Zarab, and the Court appears at pages 13-14 of the official transcript:

THE COURT: Then the last question from yesterday's order, do office holders and/or members or affiliates of the governments of the United States or Turkey do business with Mr. Zarab and/or any of Mr. Zarab's affiliates? If the answer is yes, could you explain.

MR. BRAFMAN: I think the answer might be yes and yet might be privileged, given the dynamics of this case in its present posture and some of the charges.

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THE COURT: I see.

MR. BRAFMAN: But they certainly do not impact on what Mr. Giuliani's firm does or does not do on behalf of Turkey.

THE COURT: Okay. So let me take those answers under advisement and proceed with the Curcio proceeding in this way.

May 2, 2017 TR at 13-14.

There then followed an extensive email from Ms. Murray seeking further clarification.

As an Officer of the Court who has enormous personal respect for your Honor, I must correct the official Court record as well as my sealed submission. Accordingly, I wish to respectfully inform the Court that I was NOT authorized by Mr. Zarrab to answer "yes" to your Honor's inquiry in my sealed letter and was also not authorized by Mr. Zarrab to make the statement that appears at pages 13-14 of the May 2, 2017 transcript. Mr. Zarrab maintains that to respond to that question in any way would violate his Fifth Amendment privilege against self-incrimination, an analysis that some of his legal advisors agree with. Accordingly, counsel respectfully asks to withdraw my previously filed letter under seal, to be replaced with this letter. Furthermore, when we re-visit this issue at the continued hearing on May 11, 2017, I will then clarify the record on this issue as well.

Finally, I wish to respectfully inform the Court that this inquiry should not in my judgment impact on the Curcio issue and that regardless of the facts, Mr. Zarrab knowingly and intelligently waives any such potential conflict. Despite this letter being submitted under seal, I will share its contents not only with Mr. Zarrab and his other counsel of choice, but also, with independent counsel appointed by your Honor, James DeVita.

Finally, I submit under seal additional affidavits from Messrs. Giuliani and Mukasey in response to the Court's additional questions regarding their representation.

Respectfully,



Ben Brafman

Clerk to docket & file.

SO ORDERED:

Date: 5/26/17


Richard M. Berman, U.S.D.J.